

September 9, 2003

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*; WC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

Yesterday, the following representatives of member companies in the CHOICE Coalition: Jason Oxman and Praveen Goyal, Covad Communications; John Uhley, Complete Telecommunications; Fletcher Kittredge and Rick Preti, Great Works Internet; Dennie Mecham, Rick Heming, and Linda Wilson, NC Telecom, Inc.; Mary McDermott and Steve Goodman, [NTELOS](#); Carl Oppendahl, Ruby Ranch Internet; Vernon Burke, Skowhegan OnLine Inc.; and Kirk Hundertmark, TRV Communications; met with the following representatives of the Commission's Office of General Counsel: John Rogovin, General Counsel; Linda Kinney, Acting Deputy General Counsel; John Stanley, Assistant General Counsel; John Ingle, Deputy Associate General Counsel; Jeffrey Dygert, Deputy Associate General Counsel; Debra Weiner, Assistant General Counsel; Laurence N. Bourne; James Carr; and Rodger Citron; along with Robert Tanner of the Wireline Competition Bureau; to discuss the CHOICE Coalition's emergency petition filed in the above-referenced dockets for a stay of limited portions of the Commission's disposition of the line sharing UNE in the *Triennial Review Order*.

During their presentation, CHOICE members explained why the relief they sought was properly the subject of an administrative stay request. In particular, CHOICE members emphasized that the relief they sought was not the creation of any new affirmative obligations, but rather for the Commission simply to suspend the effect of two of the most harmful aspects of its transitional phase-out of the line sharing UNE. As set forth in their stay petition, CHOICE members request that the Commission stay the effect, pending judicial review, of (1) its mandated escalating increases in line sharing prices during the course of the line sharing transition; and (2) its prohibition on the addition of new customers using line sharing after the first year of transition. CHOICE members also made clear that the affirmative continuing obligation to provide unbundled access to the high frequency portion of the loop was a creature of the Commission's *Triennial Review Order* – not the petitioners' requested stay relief. Specifically, the Commission's order made clear that, in order to effectuate its transitional phase-out, the

Commission was reinstating the obligation to provide access to the high frequency portion of the loop, and reinstating some of its previous line sharing rules.<sup>1</sup>

CHOICE members also emphasized that the effect of granting their requested stay relief would not be to create an open-ended obligation to continue providing line sharing at existing rates, terms and conditions indefinitely. Rather, the effect of granting their requested stay relief would be simply to maintain the status quo of their existing rates, terms and conditions for line sharing access (pursuant to existing interconnection agreements and state commission orders in effect) merely until the entry of a final, non-appealable order on review of the Commission's *Triennial Review Order*. Thus, far from creating any affirmative new obligation, grant of the requested stay would merely delay the onset of the Commission's phase-out of the line sharing UNE until the entry of a final, non-appealable order on review and, during the interim, maintain the status quo of line sharing access – exactly the type of relief suitable for a stay request.<sup>2</sup> CHOICE members also emphasized the Commission's wide discretion to award a stay.<sup>3</sup>

Finally, CHOICE members explained why their stay petition, like the numerous stay petitions regularly reviewed and considered by the Commission's individual Bureaus, was suitable for review and consideration by the Wireline Competition Bureau on delegated authority. In particular, CHOICE members explained that the Bureau has regularly applied the legal test of *Virginia Petroleum Jobbers Association* in considering stay requests, and that the application of this legal standard would raise no novel questions of law or policy.<sup>4</sup>

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<sup>1</sup> See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, FCC 03-36, at paras. 268-69 (rel. Aug. 21, 2003) ("In order to implement the line sharing transition plan described above, we find that it is necessary to reinstate certain rules concerning the HFPL.").

<sup>2</sup> See, e.g., *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977) ("Generally, such relief is preventative, or protective; it *seeks to maintain the status quo* pending a final determination of the merits of the suit. An order maintaining the status quo is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the order would inflict irreparable injury on the movant.") (emphasis added).

<sup>3</sup> See, e.g., *Aberdeen & Rockfish R.R. v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 409 U.S. 1207 (1972) (reviewing determination of whether to award stay pending appeal for abuse of discretion).

<sup>4</sup> See 47 C.F.R. § 0.291.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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On behalf of the CHOICE Coalition